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1430-1700 Wed

## COURSE SYLLABUS COM. 407 - LAW OF MASS COMMUNICATIONS Spring, 1990

**Course Content and Approach** - Mass Communications Law is a survey of laws and government regulations that affect the mass media in the United States. The course begins with an introduction to the legal system itself and then covers each major type of legal problem faced by the media in this country. Com. 407 is mainly a lecture-discussion course intended to convey ideas and factual information, not a "methods" course that teaches communication skills.

**Course Requirements** - There will be three exams: two midterms and a non-cumulative final. Each will be a multiple-choice test covering about one-third of the lecture material and reading assignments in the course. You will need a Scantron 882 form for each test. Please note that exams must be taken at the scheduled time except under *documented* extenuating circumstances such as an illness serious enough to require medical attention. Exams may not be made up if missed due to work conflicts or car trouble, for example. Plan ahead so you can be present on the three exam days--and allow yourself plenty of time to get to CSUF on those days even if your car is temperamental.

**Grading** - Grades are based on a point system. Each of the three tests is worth 100 points, for a total of 300 possible points. For an "A", you need 270 points, while 240 assures you a "B" and 210 a "C". These cutoff scores may be lowered slightly (but not raised) if necessary to produce a more equitable grade distribution. The minimum passing score, which will not be lowered, is 150 out of 300 points.

**Textbooks** - The textbooks are Communications Law and the California Supplement (spring, 1990 editions). Both are being duplicated by the Titan Bookstore.

### CLASS SCHEDULE - FALL, 1989

**WEEK OF:**

1/29-2/2	Overview of the legal system
2/5-9	History of the First Amendment
2/12-16	Prior restraints/Libel and slander
2/20-23	Libel and slander (continued)
2/26-3/2	Exam #1, covering lectures, text and supplements (ch. 1,2,3,4,14)
3/5-9	Invasion of privacy
3/12-16	Copyright law
3/19-23	Free press v. fair trial and contempt of court
3/26-30	Legal problems of newsgathering

**WEEK OF:**

4/2-6	Exam #2: ch. 5,6,7,8,9
4/9-13	Spring vacation (no classes)
4/16-20	Obscenity law from Comstock to "Hustler"
4/23-27	Electronic media regulation
4/30-5/4	Electronic media (cont'd)
5/7-11	Advertising regulation
5/14-18	Antitrust law, course wrapup
5/21-25	Exam #3: ch.10,11,12,13

## CASES

Tinker v. Community School District, 393 U.S. 503 (1969)  
Papish v. University of Missouri Curators, 410 U.S. 667 (1973)  
Joyner v. Whiting, 477 F.2d 456 (1973)  
Bazaar v. Fortune, 476 F.2d 570, cert. den. 416 U.S. 995 (1973)  
Bright v. L.A. Unified School District, 18 C.3d 450 (1976)  
Stanley v. Magrath, 719 F.2d 279 (1983)  
Bethel School District v. Fraser, 478 U.S. 675 (1986)  
Hazelwood School District v. Kuhlmeier, 108 S.Ct. 562 (1988)  
Leeb v. DeLong, 198 C.A.3d 47 (1988)

\*\*\*\*\* CUTOFF POINT FOR EXAM #1 \*\*\*\*\*

## PRIVACY AND PUBLICITY

### CONCEPTS

Physical intrusion  
Private facts  
False light  
Right of publicity/misappropriation  
Inheritability of the right of publicity  
Defenses and when they apply

### CASES: The development of privacy law

Pavesich v. New England Life Insurance Co., 50 S.E. 68 (1905)  
Katz v. U.S., 389 U.S. 347 (1967) (reversing Olmstead v. U.S.)

Griswold v. Connecticut, 381 U.S. 479 (1965)

Roe v. Wade/Doe v. Bolton, 410 U.S. 113 (1973)

Bowers v. Hardwick, 478 U.S. 186 (1986)

*Cable vs. Oasis*

#### CASES: Supreme Court media decisions

Time Inc. v. Hill, 385 U.S. 374 (1967)

Cantrell v. Forest City Publishing, 419 U.S. 245 (1974)

Zacchini v. Scripps-Howard Broadcasting Co., 433 U.S. 562 (1977)

Cox Broadcasting v. Cohn, 420 U.S. 469 (1975) —

Florida Star v. B.J.F., 109 S.Ct. \_\_\_\_ (1989)

#### CASES: California decisions

Melvin v. Reid, 112 C.A. 285 (1931)

Briscoe v. Readers Digest, 4 C.3d 529 (1971)

Sinatra v. Goodyear, 435 F.2d 711 (1970)

Lugosi v. Universal Pictures, 25 C.3d 813 (1979)

Diaz v. Oakland Tribune, 139 C.A.3d 118 (1983)

Nicholson v. McClatchy Newspapers, 177 C.A.3d 509 (1986)

Fellows v. National Enquirer, 42 C.3d 234 (1986)

Midler v. Ford Motor Co., 849 F.2d 460 (1988)

### COPYRIGHT AND UNFAIR COMPETITION

#### CONCEPTS

What can be copyrighted

What cannot be copyrighted

How to obtain a copyright

The Fair Use Doctrine

Compulsory Licensing

Remedies for infringement

Copyright problems: music, computers, cable television

Common law copyright

Unfair competition

Moral rights

Trademarks

Domain Controversies

California civil code law

#### CASES

International News Service v. Associated Press, 248 U.S. 215 (1918)

Teleprompter v. CBS, 415 U.S. 394 (1974) (see also  
Fortnightly v. United Artists, 392 U.S. 495 (1968))

Sheldon v. Metro-Goldwyn Pictures Corp., 309 U.S. 369 (1940)

Rosenberg Enterprises v. Random House, 360 F.2d 565 (1966)

Sony Corp. of America v. Universal City Studios, 464 U.S. 417 (1984)

Harper & Row Publishers v. The Nation Magazine, 471 U.S. 553 (1985)

John M. v. The Gap Store, 415 F.2d 64 (1969)  
(compare 20th Century Music v. A&M, 432 U.S. 491)

Community for Creative Non-Violence v. Reid, 491 U.S. 212 (1989)



## FAIR TRIAL-DETERMINATION

### CONCEPTS

The Sixth Amendment

Protective ("gag") orders

Sequestration, change of venue, etc.

Closing courtroom during:

- trial
- preliminary hearings
- testimony of minors or sex crime victims
- jury selection

Cameras in courthouses and Rule 9(b)

Penal Code sec. 866

### CASES

*Irvin v. Dowd*, 366 U.S. 717 (1961)

*Rideau v. Louisiana*, 373 U.S. 723 (1963)

*Estes v. Texas*, 381 U.S. 532 (1965)

*Sheppard v. Maxwell*, 384 U.S. 333 (1966)

*Nebraska Press Assn. v. Stuart*, 427 U.S. 539 (1975)

*Gonzalez v. DePue*, 409 U.S. 305 (1972)

*Richmond Newspapers v. Virginia*, 434 U.S. 107 (1977)

*Orendler v. Florida*, 449 U.S. 509 (1980)

*Globe Newspaper Co. v. Superior Court*, 457 U.S. 596 (1982)

*Press-Enterprise Co. v. Superior Court*, 478 U.S. 1 (1986)

*Press-Enterprise Co. v. Superior Court*, 478 U.S. 1 (1986)

(Note: there are not different cases with the same name)

## REPORTER'S PRIVILEGE, SHIELD LAWS AND CONTEMPT OF COURT

### CONCEPTS

Direct and indirect contempt  
Civil and criminal contempt  
Shield laws and reporter's privilege  
Newsroom searches

### CASES

Farr v. Superior Court, 22 C.A.3d 60 (1971); Farr v. Fitchess, 522 F.2d 464 (1975);  
In re Farr, 36 C.A.3d 577 (1974) and 64 C.A.3d 605 (1976)  
Rosato v. Superior Court, 51 C.A.3d 190 (1975)  
Bridges v. California and Times-Mirror v. Superior Court, 314 U.S. 252 (1941)  
Pennekamp v. Florida, 328 U.S. 331 (1945) (see also Craig v. Harney, 331 U.S. 367)  
Branzburg v. Hayes, 408 U.S. 665 (1972)  
KSDO v. Superior Court, 136 C.A.3d 375 (1982)  
Mitchell v. Superior Court, 37 C.3d 268, (1984)  
Zurcher v. Stanford Daily, 436 U.S. 547 (1978)

## FREEDOM OF INFORMATION

### CONCEPTS

Freedom of Information Act  
Government in the Sunshine Act  
Privacy Act of 1974  
"Buckley Amendment"  
Ralph M. Brown Act

Film censorship

Penal Code sec. 311

## CASES

Hannegan v. Esquire, 327 U.S. 146 (1946)

+ Roth v. U.S., 354 U.S. 476 (1957)

+ Jacobellis v. Ohio, 378 U.S. 184 (1964)

+ Memoirs v. Massachusetts (the "Fanny Hill" case), 383 U.S. 411 (1966)

+ Ginsburg v. U.S., 383 U.S. 463 (1966)

+ Ginsberg v. New York, 390 U.S. 629 (1968)

Stanley v. Georgia, 394 U.S. 557 (1969)

U.S. v. Reidel and U.S. v. 37 Photographs, 402 U.S. 351, 363 (1971)

+ Miller v. California, 413 U.S. 15 (1973)

Jenkins v. Georgia, 418 U.S. 153 (1974)

+ Young v. American Mini-Theatres, 427 U.S. 50 (1976)

Schad v. Mt. Ephraim, 452 U.S. 61 (1981)

New York v. Ferber, 458 U.S. 747 (1982)

Renton v. Playtime Theatres, 475 U.S. 41 (1986)

Pope v. Illinois, 107 S.Ct. 1918 (1987)

Morris v. Municipal Court, 32 C.3d 553 (1982)



Comm 407 1-29 26

Attorney - worked for -  
NAB - National Association of Broadcasters.

THE LEGAL SYSTEM -

Major Concepts -

LAW = 1) STATUTORY LAW - (ENACTED BY <sup>LEGISLATIVE BODIES</sup> CONGRESS ... )  
WRITTEN DOWN

2) Common LAW - NOT NECESSARILY WRITTEN DOWN

ACCUMULATION RESULTS & PROVIDES PRECEDENTS

"LEGAL PRECEDENTS"

eg., LIBEL - false report someone's reputation -  
concept grew out of common law

(ALIF → libel (C.L.) → became statutory

"marketplace liability" law develops ~~but~~ but  
of legal action → courts...

3) Constitutional Law - similar to common law  
but starts out w/ legal document -

eg. 1<sup>st</sup> amendment → no legal precedent vs. freedom  
of religion / speech / press ... Flag burning -  
Ponderas didn't consider flag burning.

1896 - Supreme Court reversed -

Plessy vs. Ferguson, segregation okay  
1954 Brown vs. Board of Ed., reversed decision

\* separate facilities almost never equal.

(Gould → rights & privacy.)  
reflects major change in society.

"Judge-made"  
law  
judicial law



only reason it worked = mechanism to change constitutional law.

< American legal system's greatest hits → Supreme Court rules others follow >

4) Administrative Law: all rules & regulations

adopted by fed/govt agencies

eg. → FCC rules governing broadcasting/cable  
Fair Political Practices Commission → P.R. & use  
& city newspapers -

Equity → not law → England - Common Law -

contract ~~must~~ must be kept, breach of contract = bad - ~~bad~~

Farmer's call to the innkeeper → appeal to

The King → overrule law in appeal to fairness



Chancery Court

release of contract → eg. marriage abolished  
in interest of fairness

US. no separate  
court but role  
of judge.

negotiations forp. restraining

Judge's sense of fairness



\* Steps in lawsuit (see book) profile of lawsuit.

### Diff. Between Criminal & Civil Actions:

eg.: Drunk hits car - Drages car & kills passenger

Crime against society as a whole → people vs state  
5 years - manslaughter - jail or fine to government

Drages - money compensation - in civil  
case for wrong done → Thomas Smith.

courts provide a neutral forum.

3 Basic kinds of Damages:

1) general: <sup>compensation</sup> pain & suffering > libel = embarrassment  
compensation for intangible

2) special - compensate for provable tangible loss  
(car cost to fix from 3 estimates, medical  
cost)

3) punitive: when set \$ at to do something  
to do something - malice - malicious  
set \$ at to get someone  
punish anger at the bad guy. (tangible)  
medical lawsuits.



(20)

COMM 407 2/5  
H-524 (?)

HIST & DEV of 1st Amendment  
PRIOR RESTRAINT

CAN GOVERNMENT BAN RACIST SPEECH?

GITLOW  
SCHECK

WHITNEY  
YATES

BRANDENBURG  
JOHNSON

1st Feb 26 - (1st exam) p. 250 Quotes from 1st Amendment  
CONSTITUTION

1st Amendment  
6 RIGHTS  
(1) RELIGION  
(2) FREE EXPRESSION  
(3) SPEECH  
(4) PRESS  
(5) ASSEMBLY  
(6) PETITION GOVT

WIDEN UNDERSTANDING →

RELIGION → 1700s - most European states  
HAD ESTABLISHED/OFFICIAL CHURCHES

(under) - NO OFFICIAL STATE SPONSORSHIP OF RELIGION  
eg. Teacher can't lead religious prayer,  
REGARDLESS OF NATURE -  
CONGRESS → STATE GOVT,







SCHENCK VS. U.S. GOVT -

↓ POLITICAL LEAFLETS @ PENN RAILROAD STATION "DRAFT = INVOLUNTARY SERVITUDE, GO HOME" 13<sup>th</sup> AMENDMENT -  
conviction contrary to 1<sup>st</sup> amendment -

SUPREMACY CASE: "1<sup>st</sup> Amendment was not absolute"

OLIVER WENDOLEY SONG SPEECH IS SO DANGEROUS THAT THEY CAN BE BANNED  
HOLMES '80s "CLEAR & PRESENT DANGER" TEST

↳ Schenck & son speaking → URGENT work problem & expression

WHITNEY VS. CALIF. 66 YEAR-OLD woman, Communist,  
CRIMINALLY CONVICTED OF BEING A COMMUNIST,  
RIGHTS VIOLATED BECAUSE OF POLITICAL BELIEF  
HOLMES & BRANDIS → DISSENTING OPINION, NO C&PD

ALLOW REGISTRATION Act of 1940  
'60s - SMITH ACT = CRIME = violent overthrow of  
GOVT -

YATES VS. US → "UNTIL CALL FOR ACTION" 1<sup>st</sup> Amendment  
PROTECTION, ADVOCACY & IDEAS BUT IF  
speech becomes call for action it's criminal.

1920 Gitlow (p.3) VS NEW YORK

"LEFT WING MANIFESTO" RUSSIAN WORKER MARKIST  
250p 14<sup>th</sup> amendment post civil war law protect slaves  
FROM "DUB PRESS" CAUSE - "LIBERTY" - AMENDMENTS  
APPLIES TO STATES VIA 14<sup>th</sup> amendment



To all courts

GILLOW - 1<sup>st</sup> Amendment applies BUT  
C & PD GILLOW LOSES CASE.

So WHAT VIOLATES 1<sup>st</sup> Amendment?

YATOS → ABSTRACT IDEA OKAY

BRANDENBURG VS. OHIO (1969)

Biggy of OHIO KLAN, membership drops, "ADVERTISE"  
FOR GOT TO REACH AN AUDIENCE, TV VIDEOTAPES & SPEECH,  
PROSECUTED FOR HIS ~~speech~~ advocacy conviction @

Supreme Court, "imminent danger leading to violent action"

JOHNSON VS. TEXAS (1989) - FLAG - BURNING -

1<sup>st</sup> Amendment PROTECTS POLITICAL PROTEST TO BURN

THE FLAG, SACRED SYMBOL, CONGRESS PASSED

A LAW WARNING FOR SUPREME COURT TEST...

Q.28 FLAG PROTECTION ACT 5 1989

Actual Principles of Freedom of Speech!



## Prior Restraints (Censorship)

→ ~~Restraints~~ on ~~what~~ a work can publish by  
Govt before hand  
(opposite) subsequent punishments  
false advertising } afterward.  
obscene material ...

NEAR U.S. MINISTRY (1931)

SATURDAY PRESS - LIES & SCANDALOUS REMARKS ABOUT  
GOVT OFFICIAL → LAW: BANNED AFTER

DECLARED PUBLIC NAUSEANCE. COULD HAVE FILED  
SUITS OF LIBEL BUT ANNOY OF BUSINESS PUNISHMENT  
BUT CAN'T BAN → GOVT HAS A VERY HEAVY  
BURDEN OF PROOF.

NEW YORK TIMES VS. U.S. (PENTAGON PAPERS)

VIETNAM WAR, PENTAGON "HOW DID WE GET INTO  
THIS MESS?" RAND CORP DID STUDY.

BILLED AS TOP SECRET - FOUR ADMINISTRATIONS  
BLASTED (2 DEMOS / 2 REPUBLICANS) -

DAVID L. ELLSBERG → 36 VOLUMES PHOTO COPIES,  
BOXES DUMPED ON THE DOORSTEP OF NY TIMES.

IMPORTANT TO VIETNAM DEBATE - VOLUME ONE  
PUBLISHED NIXON / WITCHAMER / NY JUDGE RESTRAINING  
ANOTHER COPY ON THE DOORSTEP OF WASHINGTON POST  
BOSTON GLOBE / LA. TIMES

PRIOR RESTRAIN "NATIONAL SECURITY"

NATIONAL  
SECURITY



SUPREME COURT EMERGENCY SESSION -

JUSTICE ROSS - 6-3 ALLOW

NEWSPAPERS TO PUBLISH

ONLY 2 VOTERS = ABSOLUTE

4 of 6 → SUBSEQUENT PUNISHMENT

LOST JOB BY ADMIN. PROSECUTION

LIMITED VICTORY ...

CLUBB → STOP FIVE FROM CLUBB'S PSYCHIATRIST  
GOVT MISCONDUCT CASE DISMISSED

UNDER RIGHT CIRCUMSTANCES COULD HAVE PRIOR  
RESTRAINT ON THE BASIS OF NATIONAL SECURITY  
BUT NOT PORTUGAL PAPERS CASE

JOHNSON'S UTILITY CASES - p. 4

JONES } vs City " "  
LEWEL } " "  
SCANDLER } " "

'30s - '40s

DOOR-TO-DOOR SOLICITATION

- OTHERS FIND IT A  
NUISANCE -

CITIES BANNED DOOR-TO-DOOR & STREET CORNER  
DISTRIBUTION (LITTER LAWS) / RICHIE LAWS

(1) GOVT HAVE RIGHT TO REGULATE TIME/PLACE/MANNER  
ON FIRST AMENDMENT RIGHTS

SUPREME  
COURT  
DECISION



~ JOHNSON'S WITH ~~STAYS~~ NEW CASE AFTER CASE

## LITERATURE DISTRIBUTION

HOPKINSON CASE → KRISHNA CASE -

MINNESOTA STATE PRISON - KRISHNA  
WANTED TO "DO OTHER THING," DISTRIBUTE LIT./  
CANT / SOLICIT WAY ...

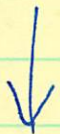
HOPKINSON → WANTS TO GIVE THEM A ~~BOOK~~

( STATE SUPREME COURT → KRISHNA WON  
US. " " → SUBVERTED

TIME, PLACE & MANNER

NAB KRISHNA PRISON AND THE PRISON IN MASS  
TO DO IT BUT AS INDIVIDUALS ~~WAS~~ -  
ALLOWED IN SPECIFIC AREA

LAX - BOARD OF AIRPORT COMMISSIONER VS  
JONS FOR ~~VS~~ (



TREND TO RESTRICT RELIGIOUS ACTIVITIES AT LAX ...  
( NO FIRST AMENDMENT ACTIVITIES AT ALL AT  
LAX

- HANDLING OUT LITERATURES AT LAX - LEFT POUCHES  
SUPREME COURT OVERTURNING CASE -  
CAN RESTRICT TIME/PLACE/MANNER BUT NOT  
ACROSS THE BOARD BAN.



WHAT ABOUT SHOPPING MALL — PRIVATE PROPERTY?

YES + NO

DO POLICIES / POLITICAL ACTIVITY

NO FIRST AMENDMENT RIGHT TO ~~BE~~ AT PRIVATE  
SHOPPING MALL  
AUDUBON VS. NLRB

↓

UNFAIR LABOR PRACTICES TO FORBID  
WORKERS TO PICKET AT PLACE OF BUSINESS

PRUNEFIELD SHOPPING CENTER VS. ROBINS. —

↓

CALIF SUPREME COURT DECISION AFFIRMED BY  
US SUPREME COURT

(P. 2) CALIF SUPPLEMENT

BROADER FREE EXPRESSION

~~THE~~ THAN U.S. CONSTITUTION

RIGHT TO DO SOMETHING UNDER STATE ~~LAW~~ LAW

NOT ~~ALLOWED~~ FORBIDDEN UNDER FED LAW

RONQUIST → STATES RIGHT OVER PROPERTY RIGHTS

STATES CAN GIVE MORE FREEDOM THAN US. CONST.

→ LIMITED RIGHT... MALL OWNERS → BONDING

Time/Place/Manner



LITERATURE DISTRIBUTION - NEWSPAPER -

RALPH'S MARKET

LORENDON V. PLAIN DEALER -

CAN PLAIN DEALER PUT NEWS RACKS IN

LORENDON? YES, CAN'T HAVE ACROSS

THE BORED BAN, CAN LIMIT BUT NOT BAN

THEY ALLOWED SOME BUT NOT OTHERS

→ CALIF FAIR CRITERIA ... PRIVATE PROP → NO

← CALIF) CANT FORGET ONE HOUSE FROM SIDEWALK

FRISBEE VS

1988 p. 40

↑ YOU CAN WALK UP & DOWN THE STREET BUT NO TARGETING

Rock music / 1st Amendment

WILSON V. ROCK AGAINST RACISM - CONTROL PARK ROCK

CONCERTS - DESCRIBE RESTRICTIONS → CITY TIGHTS

ON THE BANDS → SOUND MIX PROBLEMS -

TAKE TIGHTS / CITY CONTROL OF HOSTER VOLUME - SUIT

ROCK PROTECTED / BUT HOSTER VOLUME IS IMPORTANT

Time / Place / Manner

36 p. - RECENT OPINION

BURBANK / STARLIGHT BOKE ALLOWED SOME CONCERTS

BUT NOT OTHERS.



TRAVEL — AS FORM OF CENSORSHIP

(p. 3) — GROSSMAN VS. AM. PRESS

LOUISIANA '30s — Political Boss — Huey Long  
DAILY LIKE OPPRESSIVE PRESS —

LOW TAXED LARGE NEWSPAPERS —

S. COURT → THIS TAX IS DISCRIMINATORY

IT SINGLES OUT MEDIA, CAN'T HAVE DISCRIMINATORY TAX

SUPREMACY

(1865) MINNESOTA ... TAX MATERIALS USED BY  
NEWSPAPERS + EXEMPTED SMALL NEWSPAPERS  
VIOLATION OF FIRST AMENDMENT —  
SELECTED SOME MEDIA + NOT OTHER

OSULLIVAN

WINTER'S PROJECT VS. RAGS LAMB  
ARKANSAS — SOME MAGAZINES —

'CAUSE GOVT OFFICIALS TO JUDGE TAX ON  
MAG CONTENT — CAN BE PART OF  
PACIFIC RESISTANCE

TEXAS — EXEMPTED FOR RELIGIOUS PUBLICATION'S  
CONTENT / REL. + STATE.

(18) (p. 20) TAXING MEDIA — CALIF,  
LA CITY TAXES ALL PRINT + BROADCAST MEDIA  
BASED ON ADVERTISING / LOWER COURTS SAID OKAY  
U.S. SUP COURT WOULD NOT HEAR CASES



Comm 407 2/12

EXAM  
→ 4 plus chapters -  
chapt 14 it's

## Chapt 14: Freedom of the Student Press

Highlights → (Congr.) First Amendment protects  
1969 Case student publications

State action present ex. public school teachers  
Tinker vs Community school district

black arm bands to protest Vietnam War  
Students do have 1st Amendment right -  
if doesn't cause / threaten disruption...  
if it doesn't interfere w/ educational processes...

Official school paper couldn't arbitrarily censor it.

\* Bethel School Dist. vs Fraser -

Expelled from school for double entendre...  
did they have the right to expel him →  
Supreme Court reversal - not 1st Amendment issue  
administration finds offensive can discipline

Hazelwood → school paper articles on divorce &  
contraception teenage pregnancy...



principal tells printer not to print  
two pages ... prior restraint ...

official school paper ... first amendment  
rights not violated - high school decision -  
not decision on college publication

California Ed. Code 48907 →

"Principals not allowed to arbitrarily  
censor school editors/newspapers  
unless material obscene, libelous,  
or cause material damage"

state gives more freedom to students

LIBEL [chapter 4]  
(+ similar)

Written defamatory [similar = spoken]

Libel Elements

- (1) Defamation "statement tends to hurt someone's character" - if found untrue
- (2) Identification - mistaken id - identified wrong person
- (3) Dissemination - letter → 3rd party to see or hear
- (4) Usual Fault - showing of actual malice / negligence - Sullivan Rule



will survive ... and media can be  
wiped out w/ single libel case.

## Defenses

must have all elements but only one of the defenses  
(1) Truth - "can you prove that it's true"  
Supreme Court - person bringing suit  
must prove allegations false

(2) Fair Comment - allows media to  
make commentary/opinion of  
public figures - protects expression of  
opinions - value judgment or statement  
of fact -  
clearly marked as opinion are protected  
by first amendment.

(3) privilege - protects media when reporting  
govt documents & proceedings.  
History: members of congress protected  
from suit for statements made in  
congress → media allowed to report on  
proceedings & expanded to include  
all govt ~~work~~ proceedings: city council  
court ...  
must be accurate account of proceedings



libel per se - defamatory statement -  
words inherently carry meaning

per quod ← if you know whole story it  
would be libelous

P. 8 Felhas vs. National Enquirer  
Didit say he was married, didn't cheat...  
only case if proved special damages  
in Calif.

Can go ~~for~~ for special damages - "they  
hurt my feeling / reputation"

Californin → retraction laws -

- if retraction is published w/ 21 days  
of request or of choice → person bringing  
suit can only ~~sue~~ sue for special damages
- retraction must be as prominent as  
libelous statement
- only permitted by newspapers & broadcasters.  
(not magazines! not even news magazines)  
Calif. Bureau or National Enquirer

Wagner



Court Decisions:

NY Times vs Sullivan (1964) - Limits of  
libel rights -

Southern Christian Leadership Conference  
Ad in NY Times soliciting for funds  
For Civil Rights movement - statements in  
ad not quite true

Sullivan sues NY Times - Alabama courts  
throw awards Sullivan 1/2 million  
state court affirms Sullivan & lectures NY Times  
Supreme Court important free press - S.C. didn't  
normally hear libel cases

→ Sullivan rule - public officials must prove  
(actual malice knowingly  
or w/ reckless disregard for  
the truth)

Curtis publishing vs Butts / AP vs Walker  
Stroder, Evening Post - expose on Athletic  
Director had fixed football game

(1) electronic interviewing ever rare  
(2) source was a convicted felon

(3) what Bryant would have learned from  
conversation would have learned from  
files & scouting reports

AP vs Walker - headline goes to Old Miss. -  
KKK organized rally to set headline through



Whitford Guard -  
Cannibal in WWII indoctrinating  
troops that integration = communist plot ruin  
country - forcibly retired -  
goes to South - speaks when harassment  
is attacked - goes to Supreme Court

Supreme Court → both guys are public figures  
have to prove actual malice  
~~But~~ → <sup>(Cummings)</sup> ~~Harry~~ improbable - S.E. Post had  
 plenty of time to check = reckless ~~disregard~~  
disregard for the truth

AP → miss - ~~very~~ reckless disregard not proven  
reporter / true constraints / track record...

Public officials	} actual malice	people in the limelight - inherently under pressure - access to rebuttal
Public figures		
Private persons - negligence		
Private matters - no fault		

→ Gertz vs Welch - '68 Chicago Democratic  
Convention - wrongful death suit brought about  
Chicago Police - officer found guilty for 2nd  
degree murder -

John Birch Society article says suit 2  
communist plot to discredit police & lawyer  
is communist sympathizers.



Supreme Court - question of whether Gertz  
has to prove actual malice -

need new category → Gertz = private  
person - not as heavy a burden of proof  
and prove negligence = sloppy reporting

rather than prove actual malice

→ cases now turn on whether person bringing  
the suit is a public ~~person~~ <sup>figure</sup> or private person.

How is a public figure / private person?

Time, Inc. v. Firestone (1976) - "divorce became  
schizoid" - This missed a fine point of  
law - negligence but not actual malice -  
is one as public figure - ~~But~~ Florida law  
adulterer not given awarded alimony -  
Supreme Court → Firestone = private person

Thatcher is Proxmire's Golden Fleece Award  
Teeth clenching of simian → mental studies  
P.R. release → suit filed minor govt  
official w/ govt grants but Supreme Court  
calls him private person - A Public official  
must be major celebrity.



Dun & Bradstreet v. Greenleaf Builders  
→ this is not an issue of public concern  
purely private matter - person doesn't  
have prove any fault - credit rating  
service.

Other cases:

Caldwell v. Jones - N.E. } can you  
Kenton vs. Butler - Butler } sue a  
publication anywhere but do  
sold or where published -  $\Delta$   
can ~~prove~~ sue where ever publication makes  
economic contact

Philadelphia Newspapers v. Hepp

Burden of proof on person saying that statement  
is false

Anderson vs. Liberty Lobby (1986) -

summary judgment - person suing  
doesn't have facts of a case - then it is

Hustler Magazine vs. Falwell (1988)

Intentional ~~infringement~~ of emotional distress  
must prove actual malice → fair comment



Conrad L. Gel  $\Rightarrow$  pub syllabus  
very rare - about things civil

1964 - Garrison vs Louisiana not proven unless

Catt. cases -

Expression of Opinion is not basis of cal  
not also falsehood presented as fact.  
Sed. Black City Council  
Baker vs Artole Brimmer - opinion

Kilgore vs. Younger - Privilege (82) Defense  
| under accurately report what's said.  
| Organized crime accusation

Bindin v. Mitchell - fiction w/ recognizable  
actual characters ... possibly become libel  
case -  
SCANTON '882



# SAMPLE EXAMINATION QUESTIONS

## *Communications 407*

1. The initial step in most civil lawsuits is to file a document called the: a) complaint; b) rejoinder; c) demurrer; d) remittitur; e) indictment.
  2. Decisions of the Federal Trade Commission may be appealed to the: a) Court of Claims; b) District Court; c) District Court of Appeals; d) Circuit Court of Appeals; e) Supreme Court.
  3. Here's a legal citation: 419 U.S. 245 (1974). What does "U.S." tell you about the case? a) absolutely nothing; b) that it is a Supreme Court decision; c) that it is a U.S. District Court case; d) that it is a criminal case, not a civil case; e) that the U.S. government lost the case in 1974.
  4. Areopagitica is a famous early defense of freedom of expression. Its author was: a) Ben Franklin; b) J.J. Rousseau; c) John Milton; d) Thomas Jefferson; e) John Locke.
  5. The Sedition Act of 1798: a) recognized truth as a defense against libel charges; b) was seen by many anti-federalists, notably Jefferson and Madison, as a threat to free expression; c) inspired resentment against the Federalist Party, although no more than 25 people were charged with violating it; d) all of the above; e) none of these.
  6. The First Amendment says, "Congress shall make no law...", and it never mentions state or local governments. Why does the First Amendment apply to the states today? a) because the Supreme Court simply rewrote it without any specific legal basis for doing so; b) because of the "due process" clause of the Fourteenth Amendment; c) because of the Fifth Amendment "due process" clause; d) because of the *Near v. Minnesota* case; e) because of the *New York Times v. Sullivan* case.
  7. A normal business tax that was levied against a newspaper by a government agency was upheld in the case of: a) *Grosjean v. American Press Company*; b) *Lovell v. Griffin*; c) *Jones v. City of Opelika*; d) *Corona Daily Independent v. City of Corona*.
  8. In the "Pentagon Papers" case the position that freedom of the press should be absolute was supported by: a) all nine justices; b) only the Nixon appointees on the court; c) all six justices who voted in the majority; d) only Justices Black and Douglas; e) none of the nine justices.
  9. The Supreme Court has made it clear that the print media cannot be licensed or arbitrarily denied the right to distribute their publications. Some of the leading cases that established this principle involved local government attempts to restrict the religious activities of the Jehovah's Witness movement. Which of these cases involved Jehovah's Witnesses? a) *Lovell v. City of Griffin*; b) *Jones v. City of Opelika*; c) *Valentine v. Chrestensen*; d) *Grosjean v. American Press*; e) both A and B.
  10. The New York Times malice requirement was extended to many private citizens who just happen to be involved in an issue of public interest by the plurality opinion in: a) *Curtis v. Butts*; b) *Rosenbloom v. Metromedia*; c) *Falwell v. Hustler*; d) *Time v. Firestone*; e) *Gertz v. Welch*.
  11. In libel cases, California affords very strong protection to expressions of opinion that are clearly labeled as such. The state Supreme Court emphasized this point in the case of: a) *Times Mirror v. Superior Court*; b) *Kilgore v. Younger*; c) *Rollenhagen v. City of Orange*; d) *Good Government Group of Seal Beach v. Superior Court*; e) *Franklin v. Lodge 1108*.
  12. In 1984, the Supreme Court said appellate courts may second-guess a trial court's determination that actual malice is present in a libel case. This ruling came in the case of: a) *Bose v. Consumers Union*; b) *Seattle Times v. Rhinehart*; c) *Keeton v. Hustler*; d) *Calder v. Jones*; e) *Pring v. Penthouse*.
  13. In California, broadcast defamation is treated as: a) libel; b) slander; c) disparagement; d) both A and B.
  14. The *Stanley v. Magrath* case held that: a) public officials must prove actual malice to win libel cases; b) private persons need NOT prove actual malice to win libel cases; c) school officials may freely censor student newspapers; d) a college administration violated the First Amendment by curtailing the funding of a student newspaper after a controversial "April Fool's Day" issue was published.
  15. A high school principal's ban on the distribution of an "underground" student newspaper was ruled an unlawful act of prior censorship in the case of: a) *Trachtman v. Anker*; b) *Hazelwood v. Kuhlmeier*; c) *Spencer v. Williams*; d) *Bright v. L.A. Unified School District*; e) *Gambino v. Fairfax County Board of Education*.
- ### ANSWERS AND DISCUSSION
1. a (by definition)
  2. d (federal agency decisions may be appealed to the Circuit Courts of Appeals; see the chart of the judicial system in Chapter One of the text.)



3. b ("U.S." stands for "U.S. Supreme Court Reports," the official record of Supreme Court decisions. Both civil and criminal cases are reported in "U.S.," but not decisions of lower courts. The citation tells you nothing about who won the case.)

4. c (a basic historical fact)

5. d (as Chapter Two of the text indicates, choices a, b and c are all correct.)

6. b (In the landmark Gitlow v. New York case, the Supreme Court made the First Amendment applicable to the states. The rationale: the "due process" clause of the Fourteenth Amendment, which forbids the states to deprive "any person" or "life, liberty or property without due process of law." The Fifth Amendment concerns the rights of those accused of crimes.)

7. d (the Corona case illustrates the principle that the media must pay normal taxes just like other businesses, but not discriminatory taxes--as in Ragland and Grosjean. The other choices are cases dealing with other issues.)

8. d (to the alarm of many, only Black and Douglas stood unequivocally against prior restraint in the Pentagon Papers case.)

9. e (Lovell and Jones both involved Jehovah's Witnesses who were harassed by local authorities; the other cases dealt with different First Amendment questions.)

10. b (the Rosenbloom case was the high-water mark in the Supreme Court's progression toward protecting the media from libel suits; things have steadily deteriorated for the media since then.)

11. d (the Seal Beach case is a strong affirmation of California's commitment to protect expressions of opinion from libel suits; the other cases listed involve other libel questions.)

12. a (the Bose case upheld an appellate court's right to overrule a trial judge who reached the troubling conclusion that actual malice was present in a Consumer Reports article about Bose stereo speakers. The other cases listed are also recent, but none deal with this issue.)

13. b (the Civil Code makes broadcast defamation a form of slander and not libel in California.)

14. d (as the text explains, the Stanley case was a victory for the Minnesota Daily, whose funding via mandatory student fees was eliminated because of an offensive April 1 edition.)

15. d (all of the other choices involve situations in which administrative censorship was permitted by the courts or situations in which an official--as opposed to "underground"--student publication was censored.)







(T) (F) KEY  
1 2 3 5

PART 2

NAME

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~~Comm~~ Comm 407 3/5

16

- Constitutional Right of Privacy apt 5-9 - next matter
- media Privacy

\* Libel, old idea - value of reputation

\* invasion of privacy - new idea -

not until big enough govt/media  
Tort action { sued for libel also  
sue for invasion of privacy.

truth = not always a defense

History : 1890 - Harvard Law Review - publishing  
ought to be right of privacy - 100 yrs ago  
Louis Brandeis & Warren (Singer) -  
Govt & media so big & powerful / general  
public needs protection. Courts recognized  
need before then state legislators.

Pavesich vs New England Life Insurance Co

- used old man's photograph in an ad w/o  
permission. → resulted in celebrity endorsements...  
can't use w/o permission for commercial gain  
misappropriation of person's right of publicity



misappropriation - form of invasion of privacy  
what is + what part of person's likeness  
or ~~person~~ public persona

\* *Hidler v Ford* 1988 p. 8 - thing to ~~be~~ in  
"people think it's me ~~to~~ during ~~the~~ *Murphy* ~~saddles~~"

trial court threw it out / US. Court of Appeals  
call it misappropriation → *Ford* \$10,000 *Hidler* \$10,000  
trial Court \$400,000 → ~~actually being~~  
amt being contested in Court.

\* *Mary Sinton v Goodyear* -  
taken from "these *Rotters* are made for *batting*"  
sued - ~~lost~~ - not close enough

\* *Carson v Here's Johnny*  
portable toilets ... sued & won  
court of appeals - he has right to the phrase

News item / biography -  
misappropriation only commercial but not in  
journalistic / book documentation

\* *Cher* - p. 36 Cal Suppl. / p. 89 *National*  
vs *Forum International*



journalists can do it w/o permission but  
not advertisers -

~~free press~~ sit for

For News got interview w/ Cher  
for US magazine but rejected - sold  
to Star & Forum  
↓

"Cher, her husband & her young man..."

"but Cher wouldn't tell People or US she  
shared w/ Forum..."

loses suit vs. Star but wins vs. Forum  
because they took article & made it into an  
endorsement...

Doesn't inhibit journalists but not endorsement  
→ only defense = consent.

→ Original kind of invasion of privacy was inappropriate  
→ courts created the law w/o statute...

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Constitutional Right of Privacy  
Criminal

Bookkeeping

Katz vs U.S. 1967 - legal use of eavesdropping.  
wiretap on public phone - conviction overturned

viability of right of publicity - 50 yrs  
use of video clips by MLK...



convinced place begged use payphone cops curious ...  
→ justified right of privacy - thought he  
was free from surveillance

- Contraception - 20/25 yrs ago illegal to use  
devices even married couples

\* Griswold vs Conn. 1965 → 71

"we & London, go to jail" → those state laws  
are all unconstitutional

- Abortion - \* Roe vs Wade 1973

woman's right to terminate or continue

pregnancy - 1<sup>st</sup> trimester - no interference

2<sup>nd</sup> "

- highly make requirements

3<sup>rd</sup> "

- heavy state law

~~■~~ Sodomy

\* Bowers vs Hardwick - 1986

Georgia law, minor traffic ticket, comes home &  
brings master Hardwick - D.A. doesn't

press charges. Hardwick brings civil

suit, loses all the way to the Supreme Court.

Draws the line at homosexuality ...

States have the right to regulate ...



inconsistent w/ early findings re:  
contraception / postnatal / abortion ...

new court limit individuals' right of privacy.

didn't like above decisions: (a) amend constitution  
(b) wait til courts reverse itself

Media / Privacy

- \* Misappropriation — see above
- \* Private Facts —

newsworthiness is the defense — someone  
running for public office; past history = newsworthy —  
Private facts ~~don't~~ always work

William Reid — "Red canons" case

Brace v. Reader's Digest — "Crani doesn't pay" story —  
[Cal court ~~has~~ right to trial — relevance of private facts]

~~Intimate~~ — journalist / photographer

\* Diaz vs. Oakland Tribune — (1983)

First woman to become first student body president —

~~Oakland Tribune~~ gets information from her friend

[p. 30 Cal Suppl] source — in California

person saying what more than is not newsworthy.  
burden of proof shift



~~False info - labeling a person up before they  
public record~~

Cox Broadcasting v. Cohn - 1975 - Georgia law  
agent used rape victim's - legally gained  
information - has the right to publish it; in  
public record

Florida Star v. B.F.F. 1989 - crime victim -  
police record - legally obtained -

George Nicholson vs. McClatchy Newspapers (1986)  
state bar not minimally qualified for  
municipal judgeship - info leaked to Sacramento  
Bea - has right to publish especially w/ right  
of having run for State Attorney General ...  
media doesn't often lose private facts cases

Intrusion -

close to trespassing but not quite -  
Gutella vs. Chasno -

Followed her around ... court order to  
stay forty feet away - court & appeals  
reduces it to 25 feet away - years later  
court judgment against Gutella - contempt of court



Muller vs NBC - ~~newspaper~~ following  
parade promotional crew wound -  
Muller heart attack ... ~~crisis~~

network uses on news & information  
to news ... Calif court → Muller loses  
cases, won't throw it out

False Light -

\* Time Inc vs Hill (1967) "The Desperate Hours"  
Life magazine - writer picks book/play/work based  
on incident - fictionalized -  
Sullivan says play is about "Hill family" -  
Hill's brings suit - Supreme Court invokes Sullivan Rule  
must prove malice - loses

\* Carroll vs Forest City Publishing ('74)

Ohio bridge collapses - bumper to bumper traffic  
- ice load ... Ohio Plane Dealer - 6 months later  
how are they doing - Sunday magazine story  
w/o talking to woman - how she felt, etc.  
interviewed children ... woman case in six figure  
sum →

→ held up fairly but not necessarily bad.

Feltus vs. National Enquirer → Feltus w/ Angel  
Drakenzon story - libel pro quo - if you know



Additional facts -

sues for false light invasion of privacy -  
can't prove libel special damages tries to do end  
run ~~libel~~ do false light privacy (public figure  
must prove special damages (at 1 pocket)  
loses this case as well...

So much like libel -

libel w/o being actual defensible.



com 407 3/12

Chap 6 - Copyright/Trademarks/Patents  
Fed not state issue.

Intellectual Property Law  
- ownership of stuff considered private property  
→ analogy = house illustration -  
people involved in building houses  
royalties = rent

Differences:

- \* Copyrights - protect literary: <sup>work</sup> fiction/nonfiction  
works of art - little drawing  
sculpture  
music lyrics/score  
video/
- \* trade marks: words & phrases that have  
commercial value

Coke & cda, IBM - anyone can use a trademark  
use a book/article ... as long as  
duly noting trademark ownership  
- can't use to make another product  
w/ same name

- \* Patents - protects mechanical device, processes ...



little relevance to intellectual  
expression

Copyright Act — what can — literary artistic creation  
some degree of originality / artistic /  
creativity

Can't copyright the facts — eg. radio  
using Los Times copy is news  
significant — to use rewrite facts.

illustration: United Airlines crash w  
Louis City, Iowa → use of video  
shot & then paid copyright schedule  
after-the-fact — the facts are not  
copyrightable but the video (description)

Cannot copyright expressions of idea —

cannot copyright trademarks



well-known I getting a copyright -

as soon as you fix something in a  
tangible medium of expression = you own it.  
eg., words on disk, sketch on paper...

to make it more "legitimate"

(1) Notice: ©1990 by owner

(2) registration: govt form

deposit requirement - 2 copies of work  
\$10.00 fee

→ don't have to wait for publication to be declared copyrighted

Someone infringes your work:

sue for copyright infringement:

lost if  
not registered  
first

- (1) Att'y fees
- (2) statutory damages - schedule fee
- (3) actual damages - provable profits by the infringer

(4) injunctions - don't do it any more

~~(5) injunctions~~

(5) impoundment - unshred & destroy  
pirated copies.



Duration of copyright = authors life + 50 yrs.  
multiple authors / corporate work = 75 yrs from  
publication  
or 100 yrs from creation of  
unpublished work  
Co-authored - last remaining author + 50 yrs.

Public Domain - belongs to everyone.  
take classic work in p.d. & re-arrange it...  
→ significant artistic creations -  
"derivative work" can be copyrighted but  
not underlying classic.

ASCAP - BMI - music

Amer Society of Composers / Artists / <sup>Publishers</sup> ~~Producers~~  
Broadcast Music Incorp.

every kind of businesses that uses copyrighted  
material eg churches, radio stations, clubs...

Blanket license - rights to whole list.

Small businesses exempt - 20th Century  
music vs Akeri (churches carry out by radio  
on the shelf) -

have to  
pay

larger business - similar music vs Gaff



## Copyright Royalty Tribunal - CRT

compulsory licensing - once music is published/copyrighted - any body if they're paid royalties set by CRT they can perform it.

- \* works for hire → employed for newspaper -  
works copyright owned by newspaper  
- community for creative non-violence vs Reid.  
Who has the right to reproduce work  
- is the work an employee but an independent contractor : only if that employee does organization own copyright -  
with absence of contract  
[ Books → most writers sign over copyright to publisher ]

## \* Moral Rights : more colonization

Europe - 100 yrs - moral rights - creator gives rights over the art, even though copyright owner has right to reproduce



Berne Convention - international  
agreement copyright system  
U.S. joined Berne Convention w/o  
recognizing moral rights -  
lawsuits most likely to result -  
tide turned when U.S. copyrights were  
being ~~pirated~~ pirated

(Fair Use is p. 103 book -  
Infringement)

Emig Corp vs Universal City Studios  
court case against Universal because  
of non-copyright use of video system  
provided at home - time shifting =  
Fair-use

\* situation - technology got way ahead of  
the laws.

Harcourt & Row Pubs vs. The Nation Enterprise  
H&R sued for quoting part of Ford's memoirs  
(1985) copy before book was out



L. for Hubbard - unpublished letters  
major question re: fair use in unpublished  
works

Copyright law runs head on into First Amendment.

Unfair competition - Supreme Court -  
International News Service v. Associated  
Press (1918) - INS was rewriting  
AP stories & systematically putting it  
on its own wire - wasn't doing any  
news gathering -

Trademarks:

can copyright & not use  
trademarks = use it or lose it.

journalistic / common usage Fall into common  
use lose eg aspirin...  
copyright limited time / trademarks  
forever...

copyright get automatic at creation  
trademarks to prove that someone else  
is using your trademark - must  
prove secondary meaning.



recently created network trademarks

Exxon -

CITGO

NAVISTAR - used to be International Harvester

creating consumer confusion



4/16 Com 407

### Roth Test

- Average person
- Contemporary Community Standards
- Don't know there

### Memoranda

- Roth +
- Patent offensiveness
- utterly lacking RSV

### Miller

- Roth +
- Patent offensiveness
- Lacking SLAPS
- Local standards

1957:

Sexual content = could be banned - bookstore  
rated books ~~were~~ banned, European movies  
censored

Roth vs US (1957) Supreme Court - new definition of  
obscenity: If something is legally obscene  
it is not protected by the 1st Amendment,  
but if it is legally offensive, it can't be  
banned...

very hard to define obscenity. took a  
start at defining obscenity (p. 166):

"Average person applying contemporary  
standards whose dominant theme  
appeals to lust" →

- (1) have to judge on basis of average person  
not our most susceptible (old standard  
was ~~how~~ it affected children)
- (2) contemporary ever changing standards



(3) can't judge on the basis of a single passage.

CASES:

Jacobellis vs Ohio - what's the community standard? what's the definition of community?  $\Rightarrow$  Standards are not fixed - can't have something in one place & not somewhere else

\* Memoirs vs. Massachusetts 1966 "Fanny Hill" 1700's  
"Fanny Hill"  $\Rightarrow$  memoirs for women's pleasure  
1960s - college popularity, attained literary status  $\Rightarrow$  catholic pushed lawsuit  
Is this book obscene?

Decision addition to test/expand def

(1) Pot test plus:  
(2) state/local law that must define patent offensiveness & met but requirement

(3) After looking at redeeming social value  
- almost impossible to prove #3 beyond  
a shadow of a doubt



1968 - Nixon campaign to clean up America  
4 Nixon appointees on Supreme Court

Miller vs Cal. (1973)

no definition

- (1) Rte test plus:
- (2) patent offensiveness
- (3) lacking serious literary/artistic/political/scientific value [rephrasing "utterly lacking in social redeeming value"]
- (4) local standards - one locality can judge material obscene in one area but not another.

States don't have to go after porn

(p. 62 Cal sufficient)

Cal standard not following matter -  
more freedom - "state wide" standard.

zoning - local govt  
wharves -  
(?) planning - promoting zoning for  
sale



Kalberg vs US - ~~learning~~ -  
= okay to get the material  
provided

Gurman in NY - ~~outage~~ sale  
and have address book don't  
have to be rule obscure to be  
banned for minors

Young in her min-theater -  
Penton in Bayline theater -

regular tri/plee/min ~~meeting~~

( Pope vs Illinois (87) ~~id~~ ~~sub~~  
Jenkins vs Georgia

~~Still not satisfied with~~



Comm 217 4/23  
Comm 407 4/23

Osborne vs Ohio  
if state chooses to  
ban it - you don't have  
the right to possess para  
material involving minors.

20 yrs. ago

Stanley vs. Georgia  
law against porn -  
protected against  
what is viewed as home  
possession not a crime

Doesn't have to be legally obscene for it to  
be illegal ~~when it involves~~ when it involves  
a minor.

## Class 11 - Broadcast Media

C1) How E.M. Gov to be controls they are.

FCC - Fed Comm Commission  
Broadcast Media

FTC - Fed Trade Commission

Radio Act 1912

Radio Act 1927

~~Radio~~ Communication 4-1934  
Act



(-2-)

~~Brass~~ (Macao) wireless  
strip of sea

Titanic ~~striking~~ - use I stay off...

up part I left la

~~scribble~~

noting re: brand use

~~scribble~~

~~scribble~~

General I put

"Search" Resonance

Fed. Radio Commission

Along the River I join



1933 - Fed Radio Commission - FRC

FCC → given an staff completed  
~~passed~~ <sup>passed</sup> ~~interview~~ <sup>interview</sup>  
~~with~~ <sup>with</sup> ~~the~~ <sup>the</sup>

Radio

TV  
to ~~be~~ <sup>be</sup> ~~phone~~ <sup>phone</sup> ~~person~~ <sup>person</sup>

~~Broadcasters~~ <sup>Broadcasters</sup> ~~are~~ <sup>are</sup> ~~not~~ <sup>not</sup> ~~allowed~~ <sup>allowed</sup> ~~to~~ <sup>to</sup> ~~broadcast~~ <sup>broadcast</sup> ~~without~~ <sup>without</sup> ~~a~~ <sup>a</sup> ~~license~~ <sup>license</sup>

Broadcasters must serve public good.

Cable stations not covered by FCC rules

Broadcast Licenses

must have a ~~radio~~ <sup>radio</sup> license  
5 years - TV (permanent)  
7 years - Radio

not stations → port card ~~must~~ <sup>must</sup> ~~renew~~ <sup>renew</sup>



Petition to Deny

- Disqualified for ~~heavy~~ heavy



Let's use

presented ~~presented~~

7 1/2 annual ~~exp~~ expectation =

RKO vs. U.S.

Proposed

must have a written license  
(to terminate) VT - may 2  
after - may 5

Answer has to be presented



CHAPTER 10: OBSCENITY AND THE FIRST AMENDMENT  
CHAPTER 11: REGULATING THE ELECTRONIC MEDIA  
CHAPTER 12: ADVERTISING RIGHTS AND REGULATIONS  
CHAPTER 13: MEDIA OWNERSHIP AND ANTITRUST LAWS  
CHAPTER 10:  
CHAPTER 11:  
CHAPTER 12:  
CHAPTER 13:



## CHAPTER 10: OBSCENITY AND THE FIRST AMENDMENT

### SUMMARY

#### Does the First Amendment Protect Obscenity?

The Supreme Court has consistently held that the First Amendment DOES NOT protect materials that are legally obscene, but it does protect materials that may be vulgar and offensive but not legally obscene. Thus, the crucial issue is defining obscenity. If a work is legally obscene, it may be censored and its producers may be punished. If it is not obscene, it is protected by the First Amendment and may not be censored.

#### What Was the Hicklin Rule?

For many years, obscenity was defined by the Hicklin Rule, which looked to a work's effect on the MOST SUSCEPTIBLE members of society to determine if it was obscene. Also, the Hicklin Rule permitted classifying a work as obscene even if only isolated passages were obscene, regardless of the literary merit of the work as a whole.

#### What Happened to the Hicklin Rule?

The Hicklin Rule was followed in both the United States and England through much of the Victorian era, but it was abandoned in the twentieth century. The key turning point was the "Ulysses" decision, in which a federal court refused to follow the Hicklin Rule and instead viewed James Joyce's classic work as a whole and weighed its effect on average persons.

#### What Was the Roth Test?

Handed down by the Supreme Court in 1957, the Roth test defined obscenity by asking, "whether to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest." The result was that the First Amendment protection was extended to many works that might have been classified as obscene in an earlier era.

#### How Was the Roth Test Interpreted?

In a series of decisions during the 1960s, the Supreme Court amplified its Roth decision. For a time, it appeared that "community standards" were national standards, and that a work could not be censored unless it was "patently offensive" and "utterly without redeeming social value."

#### What Was the Miller v. California Decision?

In 1973, a new conservative majority on the Supreme Court redefined obscenity, abandoning both the idea of national standards and the "social value" test. In its place, the Supreme Court said a work is legally obscene if: 1) it meets the original Roth test; 2) it describes sexual conduct in a "patently offensive" way; and 3) the work, taken as a whole, lacks serious literary, artistic, political or scientific value. The court



made it clear that community standards could be local and could vary from place to place.

## CHAPTER 11: REGULATING THE ELECTRONIC MEDIA

### SUMMARY

#### Why Do Broadcasters Have Special Laws to Follow?

Broadcasters do not own their frequencies. The radio spectrum is a valuable and limited resource; Congress has declared that those who are given the privilege of using it must serve "the public interest, convenience, or necessity." Thus, broadcasters must answer to the Federal Communications Commission for the way they use their frequencies. They must secure licenses and then renew them periodically. In addition, they are subject to certain controls on the content of their broadcasts.

#### Why Is the Spectrum So Limited?

The radio spectrum can accommodate a large number of different users at the same time. As a policy judgment, both the FCC and international regulatory bodies have allocated only a limited portion of the spectrum to broadcasting. Radio (as opposed to television) broadcasting has been given a particularly small part of the spectrum. Recently, however, the FCC has taken steps to make more AM, FM and television frequency assignments available.

#### Are License Renewals Automatic?

No. However, if the broadcaster's service record is considered "substantial," a renewal is almost a certainty. License renewal challenges by citizens' groups and others have become much more commonplace than they once were, but non-renewals are still rare. In several instances, broadcasters have lost licenses for violating FCC rules or criminal laws, but more often even those guilty of serious offenses have been permitted to sell (and transfer their licenses to someone else) to avoid a license revocation.

#### What Was the Fairness Doctrine?

The Fairness Doctrine was a policy of the FCC that for nearly 40 years required broadcasters to provide overall balance in their programming. It was abolished in 1987, to the great consternation of Congress and many public interest groups but to the delight of broadcasters who objected to the doctrine's provision allowing FCC officials to second-guess their news judgments. However, the FCC did not abolish the Personal Attack Rule, which requires broadcasters to provide airtime to victims of personal attacks. The Fairness Doctrine should not be confused with the Equal Time Rule, a provision of the Communications Act that requires broadcasters to make equal time available to rival political candidates---at comparable



rates. In addition to abolishing the Fairness Doctrine, the FCC has recently taken other actions to deregulate broadcasting in the belief that marketplace forces and creative spectrum management will ensure that broadcasters serve the public interest.

#### How is Cable Television Regulated?

Cable television systems need no FCC license as such, since they do not broadcast over air. However, cable systems are subject to many FCC rules because their operations affect on-the-air broadcasting. The FCC has extensively deregulated cable television since 1980. In 1984 Congress passed a law that curtailed the right of local governments to regulate cable in various ways. However, cable systems continue to operate under franchise agreements, which are authorizations from municipal governments to serve specific areas.

### CHAPTER 12: ADVERTISING RIGHTS AND REGULATIONS

#### SUMMARY

##### Is Advertising Protected by the First Amendment?

Until 1975 it would have been safe to say the "commercial speech" was not generally protected by the First Amendment. However, since then the Supreme Court has extended some constitutional protection to both commercial speech and non-commercial corporate speech

##### Is Media Law Generally Applicable to Advertising?

While advertising has its own unique body of law, the general rules of media law also apply to advertising. An advertisement may lead to a lawsuit for libel, invasion of privacy, commercial misappropriation, copyright infringement or trademark infringement, for instance.

##### Do Advertisers Have a Right of Access to the Media?

Generally, there is no right of access to the media. A publisher or broadcaster may accept or reject advertising at will, unless the acceptance and rejections fall into a pattern of unfair or monopolistic business practices. However, broadcasters (but not newspaper or magazine publishers) must sell advertising to federal election candidates, and sometimes state-owned media are required to grant advertising access.

##### Who Regulates Advertising Content and Why?

The primary federal agency that regulates advertising is the Federal Trade Commission. To protect the public from false and misleading advertising, the FTC has a Congressional mandate to monitor advertising and act against practices it considers improper. Since 1980, the FTC has faced budget cuts and policy decisions by its own commissioners that curtailed its once-aggressive role in acting against questionable advertising practices.



## How Does the FTC Enforce Its Regulations

The FTC has a variety of enforcement tools, including publicity, informal letters of compliance, consent decrees and cease and desist decrees. The FTC may require substantiation of an advertising claim, and it may order corrective advertising if an ad has been particularly false or misleading.

## Does Anyone Else Regulate Advertising?

A number of other federal agencies have authority over certain kinds of advertising. Also, all 50 states have statutory laws prohibiting fraudulent business practices; many states vigorously enforce these laws against false advertisers, but some are less diligent. The advertising industry has an elaborate system of self-regulation as well. In recent years the National Association of Attorneys General has brought together the chief prosecutors of the 50 states to coordinate nation-wide actions against allegedly fraudulent advertising practices that the FTC chose not to act against.

## CHAPTER 13: MEDIA OWNERSHIP AND ANTITRUST LAWS

### SUMMARY

#### Do Antitrust Laws Apply to the Media

For many years, publishers contended that the First Amendment exempted them from antitrust laws, but the Supreme Court ruled otherwise in 1945. Today, the mass media are subject to the same antitrust laws as other businesses.

#### What Business Practices Are Unlawful?

Antitrust laws forbid a variety of practices, including tying arrangements (in which a company with a monopoly on a certain commodity forces customers to buy something else that they may not want to obtain the item that is unavailable elsewhere) and certain boycotts and other coercive practices. Also mergers that reduce competition are usually unlawful. The federal government has occasionally acted against the media for violating these laws.

#### What Is a Joint Operating Agreement?

Under a "joint operating agreement," two competing newspapers merge their business, advertising and printing operations while maintaining separate editorial staffs. Some publishers say they could not stay in business without such arrangements. The Supreme Court once ruled that a joint operating agreement violated antitrust laws, but then Congress passed the Newspaper Preservation Act, legalizing existing agreements and setting up a procedure for the approval of new ones.



### What is Cross-Ownership?

Cross-ownership occurs when one part owns a combination of newspapers, broadcast properties and/or cable systems in the same metropolitan market area.

### Are Cross-Ownerships Prohibited?

Under FCC rules that have been upheld by the Supreme Court, new newspaper-broadcast cross-ownerships are forbidden, but most existing cross-owners were not required to sell any of their properties. Cable-broadcast combinations in the same market are also forbidden, as is the acquisition of one or more radio stations by a firm that owns a television station in the same market. However, a number of companies have obtained waivers of these FCC rules.

### What is the Rule of Twelves?

The Rule of Twelves is an FCC regulation that says a company may own no more than 12 television stations, 12 AM radio stations and 12 FM stations. In addition, the 12 tv stations may not reach a combined total of more than 25 percent of the nation's tv households. If a firm owns a UHF tv station instead of a VHF tv station in a market area, only half the households there are counted toward this total.

### How Will the New Technologies Affect Media Ownership?

As new technologies such as fiber optics, satellite communication and high-definition tv develop, the print and electronic media---and ultimately the telephone companies as well---will probably attempt to become direct competitors, with each seeking to offer as many communication services as possible.

## CHAPTER 10:

### Hannegan v. Esquire 1964

mag more sexually oriented than today; postmaster general refused the magazine second class mailing privileges; federal appellate court reversed that postal decision; SC agreed; Willson O. Douglas "Congress has left the postmaster general with no power to prescribe standards for literature or the art which a mailable periodical disseminates"

### Roth v. US '57

Samuel Roth convicted under federal law for mailing circulars, a book and advert material that were considered obscene; [Albert v. California]---conviction upheld but new rule: obscene material not protected but new def of obscenity: "whether to the average person, applying contemporary community standards, the dominant theme of the material taken as a whole appeals to prurient interest."



Jacobellis v. Ohio '64

Nico Jacobellis, theater manager violating Ohio law by showing french film "Les Amants"; court overturned decision; film not obscene, shown in about 100 cities (2 in Ohio); Brennan, need National standard; Warren protest, community diversity.

Memoirs v. Massachusetts (Fanny Hill) '66

SC : Fanny Hill=not obscene; Brennan: 3-part-test: Roth test, plus "patent offensiveness" and "utterly without redeeming social value." 1750 John Cleland, book censors Massachusetts 1821; 1960s translated into braille, placed in the Library of Congress . . . .

Ginzburg v. US '66

Ralph Ginzburg, well-known pornographer; avoided dealing with the question of whether the publication he wa convicted of maarketyng were inherently obscene and instead took note of the way he promoted his works; conviction on the basis of the conduct of the seller; Blue Ball and Intercourse, PA or Middlesex, NJ mailing places

Ginsberg v. New York '68

Sam Ginsberg for violating a state law against selling to minors materials defined to be obscene on the basis of its supposed effect on them; "variable obscenity"

Stanley v. Georgia '69

law enforcement "fishing expedition" Police searched Robert Eli Stanley's home in quest of bookmaking material found porno films; Marshall, use even obscene materials in the privacy of one's home.

US v. Reidel and US v. 37 Photographs '71

Reidel: upheld federal obscenity law's ban on mailing obscene material, even to consenting adults; 37 photos: customs could still seize obscene materials fomr returning traveler's luggage, even if intended for private use.

Miller v. California '73

Marvin Miller conducted a mass mail campaign to sell "adult" material; 5 brochures were sent to a Newport Beach, CA restaurant and the recipients complained to police. New obscenity test:

1) an average person, applying contemporary community standards, would find that the work, taken as a whole, appeals to the prurient interest; 2) The work depicts or describes, in a patently offensive way, sexual conduct



specifically defined by the applicable state law; 3) The work, taken as a whole, lacks serious literary, artistic, political or scientific value.

Jenkins v. Georgia '74

Billy Jenkins, theater manager, convicted showing R-rated Academy Award-nominated "Carnal Knowledge"; hedging court's commitment to "local standards"

Young v. American Mini-Theaters '76

use of zoning laws; control time, place and manner

Schad v. Mt. Ephraim '81

communities could not use zoning to banish adult entertainment entirely without violating the First Amendment; SC overturned law: mere nudity is not obscene; city could ban all forms of entertainment (including motion pictures) but not just some . . .

New York v. Ferber

New York law that permitted criminal prosecutions for those who produce or sell printed matter or movies in which minors perform sex acts, without any proof of obscenity;

Renton v. Playtime Theaters, '86

could prohibit adult businesses within 1,000 feet of any park, school, church or private home;

Pope v. Illinois '87

the measurement of "serious . . . value" = based on objective standards, a "reasonable man" test should be used to determine whether a literary work has serious value; expert witnesses could be summoned to testify as to the serious literary, artistic, political or scientific value; White: "the proper inquiry is not whether an ordinary member of any given community would find literary, artistic, political, or scientific value in allegedly obscene material, but whether a reasonable person would find such value in the material taken as a whole.

Morris v. Municipal Court '82

Santa Clara county prohibited nude performances except in concert halls and theaters; CA SC pointed out subjectiveness, court refused to distinguish between the rights and tastes of the well-heeled patrons of legitimate theaters and those of the blue-collar customers of the bar.



## CHAPTER 11:

Cases: Broadcast ownership and licensing

Office of Communication of United Church of Christ v. FCC '69

landmark court decision giving citizens' groups right to challenge license renewals; appealed the FCC's radio deregulation to the US Court of Appeals

Central Florida Enterprises v. FCC '82

FCC's new policy of considering a licensee's "renewal expectancy" whenever there is evidence of "substantial" service

RKO General v. FCC '81

General Tire illegal activity, big case, Boston license lost, allowed to move NY station to NJ and then sell, sell LA station, sell other stations for 2/3 market value. FCC claim frequencies = public, but equals valuable property to be bought and sold.

Cases: Broadcast Content regulations

Red Lion v. FCC '69

Fairness Doctrine: '64 presidential election, evangelist attacked Fred Cook, author of a book critical of Barry Goldwater; Cook demanded reply time under the Personal Attack Rule; Red Lion: "buy time"; FCC "give it to him"; SC: 'yes 1st amendment, but public priority to broadcaster; give it to him".

CBS v. Democratic National Committee '73

broadcaster may reject editorial advertising if they wish.

CBS v. FCC '81

6-3 voting affirmed the commission's authority under Section 312(a)(7) to order broadcasters to air federal candidates' political statements.

Banzhaf v. FCC '68

a federal appellate court upheld the ruling that broadcasters who carried cigarette advertising (which was legal then) to provide free reply time to anti-smoking groups under the Fairness Doctrine.

Public Interest Research Group v. FCC '78

FCC new rules said that henceforth the Fairness Doctrine would not apply to commercial advertising for products; ads for snowmobiles and environmentalists



Pacifica Foundation v. FCC '78

FCC v. WNCN Listeners Guild '81

FCC v. League of Women Voters of Calif., '84

Telecommunications Research Action Center v. FCC '86

Syracuse Peace Council v. FCC '89

Sable Communications v. FCC '89

Cases: Cable and new technologies regulation

US v. Southwestern Cable Co. '68

US v. Midwest Video '79

Capital Cities Cable v. Crip '84 [also New York City v. FCC '88]

Home Box Office v. FCC '77

Quincy Cable v. FCC; Turner Broadcasting v. FCC '85

Century Communications Corp v. FCC '87

City of Los Angeles v. Preferred Communications '86

Wilkinson v. Jones '87

#### CHAPTER 12:

Valentine v. Chrestensen '42

Bigelow v. Virginia '75

Virginia Citizens Consumer Council v. Virginia State Board of Pharmacy '76

Linmark Associates v. Village of Willingboro '77

Bates v. Arizona State Bar [Zauderer v. Office of Disciplinary Counsel '85]  
'77

First National Bank v. Bellotti '78

Consolidated Edison v. Public Service Commission '80



Central Hudson v. Public Service Commission '80

Metromedia v. San Diego '81

Members of the L.A. City Council v. Taxpayers for Vincent '84

Bolger v. Youngs Drug Products Corp. '83

Dunagin v. Oxford/Lamar Outdoor Advertising v. Mississippi Tax Commission  
'83

Posadoas de Puerto Rico v. Tourism Company of Puerto Rico '86

State University of New York v. Fox '89

Chicago Joint Board v. Chicago Tribune '70

Adult Film Assn. v. Times-Mirror corp. '79

Lehman v. Shaer Heights '74

Tornilio v. Miami Herald '74

FTC v. Cogate-Polmolive '65

Warner-Lambert v. FTC '77

#### CHAPTER 13:

Associated Press v. US '45

Lorain Journal v. US '51

US v. Times-Picayune '53

US v. Kansas City Star '57

US v. Times-Mirror '67

Citizen Publishing v. US '69

Committee for an Independent P-I v. Hearst Corp. '83

National Citizens Committee for Broadcasting v. FCC '78